

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
STEFANO FARSURA, et al.,

Plaintiffs,

- against -

QC TERME UC CORP, et al.,

Defendants.  
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21-cv-9030 (AT) (RWL)

**ORDER**

<b>USDC SDNY</b>
<b>DOCUMENT</b>
<b>ELECTRONICALLY FILED</b>
<b>DOC #:</b> _____
<b>DATE FILED:</b> 8/22/2022

**ROBERT W. LEHRBURGER, United States Magistrate Judge.**

This order resolves the clawback issue raised by the parties at Dkts. 135-138. Plaintiff's application at Dkt. 135 is denied.

First, the Court disagrees with Plaintiff that Defendants refused to comply with the protective order at Dkt. 38. That order expressly permits a party receiving an inadvertently produced document to refuse return of the document, at which the point the producing shall make an application to the Court (Dkt. 38 at No. 8); that is what happened here.

The email communication at issue is not protected work product; rather, it reflects Plaintiff's thoughts on what his attorneys communicated to him about what they felt. What Plaintiff's attorneys communicated to him ordinarily would be protected by attorney-client privilege, but, per the Court's earlier ruling, Plaintiff's disclosure to Mr. Kiarsis waived that privilege. Plaintiff cannot now attempt to shoehorn the communication into the inapt work product doctrine.

Accordingly, Defendants may inquire about the email communication at Mr. Kiarsis' deposition. Whether the communication and related testimony may be admitted on summary judgment or at trial is a separate issue that this order does not address.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Lehrburger', with a long horizontal stroke extending to the right.

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ROBERT W. LEHRBURGER  
UNITED STATES MAGISTRATE JUDGE

Dated: August 22, 2022  
New York, New York

Copies transmitted this date to all counsel of record.